Supreme Court, U.S.
FILED

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IN THE OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1993

No. _____

CYNTHIA F. D'AVANZO
Petitioner,

v.

CITICORP MORTGAGE, INC.
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE STATE OF CONNECTICUT APPELLATE COURT

PETITION FOR WRIT OF CERTIORARI

Kevin A. Coles
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Two Corporate Drive Suite 340
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QUESTIONS PRESENTED FOR REVIEW

A. WAS THE PETITIONER DENIED HER RIGHTS TO DUE PROCESS OF LAW WHEN THE TRIAL COURT REOPENED THE JUDGMENT OF STRICT FORECLOSURE WITHOUT ANY NOTICE TO THE PETITIONER OR ANY OPPORTUNITY TO BE HEARD?

B. SINCE THE TRIAL COURT FOUND THAT THE PETITIONER'S DUE PROCESS RIGHTS HAD BEEN VIOLATED, DID THE COURT ERR IN NOT FINDING THAT THE ONLY REMEDY FOR VIOLATION OF THOSE RIGHTS WAS TO VACATE THE OFFENDING ORDER?

C. DID THE COURT ERR IN FAILING TO DETERMINE THAT THE PETITIONER HAD A RIGHT TO RELY ON THE PRIOR JUDGMENT OF STRICT FORECLOSURE?

D. SHOULD A PERSON WHOSE CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED BE PUT TO THE BURDEN OF PROVING SOME PREJUDICE, OR THAT THE BREACH WAS NOT CURED BY SUBSEQUENT JUDICIAL ACTION?

E. IN GRANTING THE MOTION FOR DEFICIENCY JUDGMENT, DID THE TRIAL COURT ENDORSE AND APPROVE A VIOLATION OF THE PETITIONER'S RIGHT TO DUE PROCESS OF LAW?

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No. _____

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE STATE OF CONNECTICUT APPELLATE COURT

PETITION FOR WRIT OF CERTIORARI

THE PETITIONER, CYNTHIA F. D'AVANZO, by and through her attorney, Kevin A. Coles, hereby petitions this Court to issue a Writ of Certiorari to review the opinion

of the Appellate Court of the State of Connecticut entered on June 15, 1993. The Petitioner's petition for Certification to the Supreme Court of the State of Connecticut was denied on September 15, 1993.

OPINIONS BELOW

(a) On December 9, 1991, the Connecticut Superior Court entered a judgment of strict foreclosure and notice of the entry of that judgment was given to the petitioner. (Appendix A)

(b) On January 14, 1992, the Connecticut Superior Court reopened a Judgment of Strict Foreclosure in an unreported order which is attached hereto and designated as Appendix B.

(c) On June 3, 1992, the Superior Court denied the Petitioner's Request for a Temporary and Permanent Injunction in an unreported opinion which is attached hereto and designated as Appendix D.

(d) On November 23, 1992, the Superior Court entered a Deficiency Judgment in favor of the Respondent in an unreported order which is attached hereto and designated as Appendix E.

(e) On June 15, 1993, the Appellate Court for the State of Connecticut issued its opinion which is attached hereto and designated as Appendix F.

(f) On September 15, 1993, the Supreme Court of the State of Connecticut issued its opinion which is attached hereto and designated as Appendix G.

JURISDICTION

(a) The date of judgment which is sought to be reviewed was June 15, 1993. Pursuant to Rule 13.1 of the Rules of the Supreme Court, the Petition for Certification made by the petitioner to the Supreme Court of the State of Connecticut

was denied on September 15, 1993.

(b) The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1257(a).

CONSTITUTIONAL PROVISIONS, STATUTES AND PRACTICE RULES INVOLVED

The constitutional provision involved is the Fourteenth Amendment to the Constitution of the United States.

The statutory provisions involved are Connecticut General Statutes Sections 49-1, 49-14(a) and 49-15. The Connecticut Practice Rules involved are Section 121(c), 354. (See Appendix H)

STATEMENT OF THE CASE

NATURE OF THE CASE

This Petition for Certiorari is a consolidation of two appeals. In the first action, the petitioner sought a temporary and permanent injunction requesting that the trial court declare null and void its own action in reopening a judgment of strict foreclosure when no notice or opportunity to be heard had been given to the petitioner.

Thereafter, in the foreclosure case referred to above, the court entered a deficiency judgment. The entry of the deficiency judgment would have been prohibited if the judgment of strict foreclosure had not been reopened.

When the Superior Court reopened the judgment of strict foreclosure at the respondent's request, it did so without any notice to the petitioner and without granting the petitioner an opportunity to be heard on the motion. When the judgment was reopened and re-entered, it gave the respondent an opportunity to seek and obtain a deficiency judgment.

STATEMENT OF FACTS

On December 14, 1988, the respondent loaned the petitioner the sum of One Hundred Eleven Thousand Dollars.

In consideration thereof, the petitioner granted a mortgage to secure that loan on real property located at 173 Lawn Avenue, Stamford, Connecticut. On or about June 26, 1991, a fire occurred at the premises.

On or about August 16, 1991, the respondent instituted an action in the Superior Court, to foreclose its mortgage on the subject premises.

The petitioner had not appeared and a default for failure to appear was granted on October 7, 1991. On December 9, 1991, based upon respondent's Motion for Strict Foreclosure of Mortgage dated November 7, 1991 and after due notice to the petitioner, the court entered a judgment of strict foreclosure against the petitioner. A law day of January 14, 1992 was ordered by the court. Notice of this ruling was sent to petitioner by respondent on January 7, 1992 in the form of a Notice of Judgment and Taxation of Costs dated January 4, 1991. (App. A)

On January 14, 1992, respondent filed a Motion to Reopen Judgment of Strict Foreclosure and Reset Law Days (App. B). On the same day, the respondent appeared before the Superior Court and sought and obtained an order reopening the judgment of strict foreclosure. The Superior Court reopened the judgment of strict foreclosure and re-entered judgment and set a law day of June 15, 1992.

The petitioner did not receive any copy or notice of the motion, nor any notice that the respondent was proceeding with the motion at any time prior to respondent's proceeding thereon.

The respondent never gave the petitioner any notice that a new judgment had been entered as required by Section 354

of the Connecticut Practice Act. (App. H, p. 43) This omission deprived the petitioner of her right to appeal the January 14, 1992 judgment which had to be done within 20 days from the judgment.

On or about February 26, 1992, the petitioner appeared by counsel in the foreclosure action and filed an Objection to Motion to Reopen Judgment and Reset Law Days and a Motion to Re-Argue the Motion to Reopen Judgment and Reset Law Days.

Thereafter, the petitioner instituted an action for an injunction seeking to enjoin the respondent from seeking satisfaction of its debt by any means including insurance proceeds and further requesting an order declaring the order of the Superior Court reopening the judgment null and void. (App. C) On or about June 3, 1992, the Superior Court issued a Memorandum of Decision in that action. (App. D) The court found that the petitioner was entitled to notice of the December 9, 1991 judgment and that a notice pursuant to Section 354 had been given to the respondent with respect to the December 9, 1991 judgment. (App. D, P.28)

The trial court specifically found that the Petitioner did not receive any prior notice of the filing of the Motion to Reopen the Judgment. (App. D, P.28) The trial court also found that the plaintiff was not provided an opportunity to be heard prior to action being taken on the Motion to Reopen the Judgment. (App. D, p.28)

The court also specifically found that Citicorp's Motion to Reopen the Judgment and Reset Law Day constituted a pleading asserting new and additional claims for relief within the meaning of Practice Book Section 121(c). (App. D, p. 29) None of these findings have been challenged or overruled.

The court then denied the petitioner's request for

temporary and permanent injunction. It ordered a hearing on the petitioner's Objection to the Motion to Reopen Judgment and the Motion to Reargue pending in the foreclosure case. (App. D, p.29) The petitioner appealed the court's denial of her request for an injunction.

On June 10, 1992, in the foreclosure action, the Superior Court granted the petitioner's Motion to Re-argue and then denied the petitioner's Objection to the Motion to Reopen.

On June 15, 1992, the petitioner did not redeem the property. Title to the property passed to the respondent.

Thereafter, the respondent filed a Motion for Deficiency Judgment. On November 23, 1992, the Superior Court entered a deficiency judgment in favor of the respondent in the total amount of $31,681.72. (Appendix E) The petitioner took an appeal from this judgment.

The petitioner's appeals from the two judgments of the Superior Court set forth above were consolidated for argument purposes in the Appellate Court for the State of Connecticut. On June 15, 1993, the Appellate Court affirmed both decisions of the trial court (App. F) On September 15, 1993, the Supreme Court for the State of Connecticut denied the petitioner's Petition for Certification without comment. (App. G)

STAGES AT WHICH FEDERAL QUESTIONS WERE RAISED.

The petitioner raised the issue of deprivation of the petitioner's rights of due process, lack of notice and opportunity to be heard in its Application for a Temporary Injunction and Order to Show Cause dated March 16, 1992 and in the complaint attached thereto of the same date. (App. C) The petitioner raised the same arguments in advocating the Motion to Reargue and Objection to Motion to Reopen.

The trial court found that the petitioner was entitled to notice and specifically found that the petitioner did not receive any prior notice of the filing of the motion to reopen the judgment. (App. D, P.28). The trial court also found that the plaintiff was not provided an opportunity to be heard prior to action being taken on the Motion to Reopen Judgment. The trial court denied the plaintiff's Request for a Temporary and Permanent Injunction and ordered a hearing on other motions.

The petitioner raised the same issues in a memorandum filed in opposition to the respondent's Motion for a Deficiency Judgment. The court entered the deficiency judgment without comment on these issues. (App. E)

The petitioner raised these issues in her appeal of both trial court rulings to the Appellate Court for the State of Connecticut. The Appellate Court specifically noted that the petitioner had no notice of the motion or hearing prior to the proceedings of January 14, 1992. (App. F, P.34, 35) The Appellate Court found that the petitioner had foregone her right to raise her claims of lack of notice and deprivation of due process when she failed to appeal from the overruling of her objection to the motion to open. (App. F, P. 38) The Appellate Court further found that the petitioner had failed to demonstrate irreparable harm because she had a full opportunity to challenge the opening of the judgment and the resetting of the law day when the court heard her motion to reargue and conducted a hearing on her objection on Citicorp's Motion to Open. (App. F, P. 40)

ARGUMENTS

THE PETITIONER WAS DENIED HER RIGHTS OF DUE PROCESS OF LAW BECAUSE SHE WAS NOT GIVEN NOTICE AND AN OPPORTUNITY TO BE HEARD.

I. EVERY LITIGANT IS ENTITLED TO NOTICE AND AN OPPORTUNITY TO BE HEARD.

The United States Supreme Court stated in *Peralta vs. Heights Medical Center*, Inc., 485 U.S. 80, 99 L.Ed 2d 75, 108 S.Ct. 896 (1988), at page 84:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to appraise interested parties of the pendency of the action and afford them the opportunity to present their objections (cases cited). Failure to give notice violates "the most rudimentary demands of due process of law" (cases cited).

The trial court determined that the petitioner was entitled to notice of the December 9, 1991 judgment by virtue of Section 354 of the Practice Act, and that she received said notice. (App. D, p.28)

The trial court also specifically found that the petitioner did not receive any prior notice of the filing of the Motion to Reopen Judgment. The court also decided that petitioner was not provided an opportunity to be heard prior to action being taken on the Motion to Reopen Judgment. (App. D, p.28)

II. THE ONLY REMEDY FOR THE VIOLATION OF THE PETITIONER'S DUE PROCESS RIGHTS IS TO VACATE OR VOID THE OFFENDING ORDER AND JUDGMENT.

In *Peralta*, (infra) the Texas Supreme Court had affirmed the entry of the default judgment because the defendant admitted in its bill of review that it had no meritorious defense to the underlying action. The United States

Supreme Court rejected as being plainly infirm because of the lack of notice and an opportunity to be heard. The Court stated, at 86-87:

> Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, "it is no answer to say that in this particular case due process of law would have led to the same result because he had no adequate defense on the merits" (cases cited).

The Court then stated that the only remedy for an abuse of due process is to vacate the offending order. The Court said, at 87:

> As we observed in *Armstrong vs. Manzo*, supra, at 552, 14 L.Ed 2d 62, 85 S.Ct. 1187 only (wip(ing)) the slate clean...would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place." The due process clause demands no less in this case.

In the injunction action, the petitioner sought to have the slate wiped clean. Instead, the Connecticut Superior Court took an "no harm, no foul" perspective and allowed the reopening of the judgment and re-entry of the judgment to stand.

That order in turn allowed the respondent to file a Motion for a Deficiency Judgment and obtain an deficiency judgment after hearing.

In order to wipe the slate clean at the present time, this court must declare the order reopening the judgment and re-entering the judgment made on January 14, 1992 null and void. The court must also vacate the deficiency judgment because the only reason that the respondent was able to obtain the deficiency judgment was because of its blatant violation of the petitioner's rights of due process.

Voiding of both these judgments would place the petitioner in exactly the same position she would have been in if the judgment of December 9, 1991 had been allowed to stand and the law day of January 14, 1992 had been allowed to pass.

The respondent will complain that it will be wrongfully deprived of its deficiency judgment if the judgment of December 9, 1991 is reinstated. However, the respondent should not be allowed to complain about the loss of its opportunity for deficiency judgment when it so clearly took advantage of the petitioner and blithely violated her rights of notice and opportunity to be heard. The respondent cannot prosper and be allowed to seek and collect a deficiency judgment based upon its violation of the petitioner's fundamental constitutional rights.

The respondent will also complain that the petitioner should have appealed the trial court's overruling of its objection to the Motion to Reopen. That specific order was not appealed for a very practical and equitable reason. First, the petitioner's right to appeal the January 14, 1992 judgment had passed. Second, throughout this litigation, the petitioner's intent had been to surrender title to the property into the respondent's hands at the earliest possible time. If the order overruling the objection to the Motion to Reopen had been appealed, the law day of June 15, 1992 would have been moot and title to the property would not have passed to the respondent on that date.

The petitioner would have been further burdened with responsibility for the property, taxes, insurance and all the other risks of ownership. She further would have been burdened with continuing interest upon the debt owed the respondent. As time went by, her situation would have become more practically untenable and certainly more inequitable.

In order to achieve the result initially sought, the petitioner did not appeal that ruling and allowed the property to pass by operation of law to the respondent on June 15, 1992.

III. THE REOPENING OF THE JUDGMENT OF DECEMBER 9, 1991 VIOLATED THE PETITIONER'S DUE PROCESS RIGHT TO RELY ON THAT JUDGMENT.

In order to appreciate the significance of the denial of petitioner's right of notice and opportunity to be heard, this court must consider what the statutory consequences would have been had the trial court not reopened the judgment on January 14, 1992. The reopening of judgments of foreclosure are governed by C.G.S. Section 49-15. The statute states:

> Any judgment foreclosing the title to real estate by strict foreclosure may, at the discretion of the Court rendering the same, upon the written motion of any person having an interest therein, and for cause shown, be opened and modified, notwithstanding the limitation imposed by Section 52-212a, upon such terms as to costs as the Court deems reasonable; **but no such judgment shall be opened after the title has become absolute in any encumbrancer**. (emphasis added)

Title would have become absolute in Citicorp on January 15, 1992.

Thereafter, any action on this debt would have been barred. C.G.S. Section 49-1 states, in pertinent part, as follows:

> The foreclosure of a mortgage is a bar to any further action upon the mortgage debt, note or obligation against the person or persons who are liable for the payment thereof who are made

> parties to the foreclosure and also against any person or persons upon whom service of process to constitute an action in personam could have been made within this state at the commencement of the foreclosure; . . .

Therefore, the judgment of strict foreclosure entered in favor of the respondent and vesting of title in the respondent as a result of the passing of the law days would be a bar to any further action on the debt. The debt would have been extinguished.

Had the judgment not been reopened by the Superior Court, the respondent would have had the right to file a motion for deficiency judgment pursuant to C.G.S. Section 49-14(a) within 30 days of January 15, 1992.

If the trial court had voided its order of January 14, 1992, the respondent would have taken absolute title to the property effective January 15, 1992 and its right to seek a deficiency judgment would have expired through lapse of time.

After the December 9, 1991 judgment of strict foreclosure had entered, the petitioner had an absolute right to receive notice of the judgment entered after default, pursuant to Section 354 of the Practice Act. On January 7, 1992, counsel for respondent sent the petitioner a Notice of Judgment and Taxation of Costs as required by Section 354. (App. A) The petitioner received that notice which gave her the exact terms of the judgment including the law days. (App. A)

When the petitioner received the Notice of Judgment and Taxation of Costs, she had actual notice that the court had determined the issue between the parties and had issued a judgment of strict foreclosure, with all its terms including that law days were to commence January 14, 1992.

The petitioner had every right to rely on that judgment as

fixing not only the terms of the judgment against her but also the terms for her redemption of the property.

At that point, the petitioner had three choices: 1. To redeem the property on or before January 14, 1992. 2. Not to redeem the property on or before January 14, 1992. 3. Move to reopen the judgment pursuant to C.G.S. Section 49-15.

The petitioner decided not to redeem the property and not to reopen the judgment. She decided to let the respondent take title to the property by operation of law. The respondent's unilateral action in reopening the judgment deprived her of her right to rely on the judgment of December 9, 1991 and all the consequences thereof. Parenthetically, the respondent's actions also deprived the petitioner of her right to appeal the January 14, 1992 decision because she never received notice of that decision.

IV. THE CONNECTICUT COURTS HAVE VIOLATED A FUNDAMENTAL RIGHT LONG RECOGNIZED BY THE CONNECTICUT COURTS, AND THE DUE PROCESS CLAUSE OF THE STATE AND FEDERAL CONSTITUTION.

Connecticut jurisprudence is founded on the fundamental right of all parties to any action to have notice and an opportunity to be heard on the adjudication of any matter of conflicting rights and interests. In *Hasbrouck v. Hasbrouck*, 195 Conn. 558, 559-560, 489 A2d 1022 (1985), the Connecticut Supreme Court stated:

> It is the settled rule of this jurisdiction, if indeed it may not be safely called an established principle of general jurisprudence, that no court will proceed to the adjudication of a matter involving conflicting rights and interests, until all persons directly concerned in the event have been actually or

> constructively notified of the pendency of the proceeding, and given reasonable opportunity to appear and be heard. (cases cited)
>
> It is fundamental in proper judicial administration that no matter shall be decided unless the parties have fair notice that it will be presented in sufficient time to prepare themselves upon the issue. (cases cited)

accord, *Costello v. Costello*, 186 Conn. 773, 776-77, 443 A.2d 1282 (1982); *Bonner v. American Financial Marketing Corporation*, 181 Conn. 57, 58, 434 A.2d 323 (1980).

The Superior Court and Appellate Court should not have condoned the respondent's violation of the petitioner's constitutional rights. See *Pappas v. Pappas*, 164 Conn. 242, 320 A.2d 809 (1973).

The Superior and Appellate Courts have condoned the respondent's violation of the plaintiff's constitutional rights by failing to declare the Motion to Reopen the Judgment and consequent entry of judgment on January 14, 1992 null and void, and by awarding the respondent a deficiency judgment.

REASON FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

In the face of a specific trial court finding of lack of notice and lack of opportunity to be heard, the Connecticut State Courts have failed to follow their own established principle of general jurisprudence founded in the 14th Amendment. The principle is that no court will proceed to the adjudication of a matter until all persons directly concerned in the event have notice of the proceeding and been given a reasonable opportunity to appear and be heard. Therefore, the court of

last resort in Connecticut has decided a federal constitutional question in a way that directly conflicts with the Fourteenth Amendment to the United States Constitution, decisions of the United States Supreme Court and Connecticut common law.

CONCLUSION

For the reasons stated above, the petitioner believes that the trial court should have declared the order reopening the judgment and re-entering judgment on January 14, 1992 null and void and, in order to maintain the status quo between the parties, voided the deficiency judgment entered thereafter. Both the judgment entered on January 14, 1992 and the deficiency judgment entered thereafter in the same case stem from and are based upon orders that violated the petitioner's due process rights of notice, opportunity to be heard, and her right to rely on the judgment of December 9, 1991. The *Peralta* case decided by this court demands no less than wiping the slate clean when an order has been entered in violation of these due process rights.

Dated this 10th day of December, 1993.

Respectfully Submitted,

ATTORNEY FOR PETITIONER

Kevin A. Coles, Esq.
Two Corporate Drive
Suite 340
Shelton, CT 06484
(203)335-3131

APPENDIX A

D.N. CV 91-0119495S — SUPERIOR COURT
CITICORP MORTGAGE, INC. — J.D. OF STAMFORD/ NORWALK AT STAMFORD

VS.

CYNTHIA F. D'AVANZO — JANUARY 4, 1991

NOTICE OF JUDGMENT AND TAXATION OF COSTS

Pursuant to Section 354 of the Practice Book notice is hereby given to all appearing and non-appearing parties that on December 9, 1991 a judgment of strict foreclosure was entered by the above court. The terms of said judgment provide that the amount of the judgment debt is $122,728.18, plus costs in the amount of $968.28, and attorney's fees in the amount of $1,000.00. This judgment further provides that the law days are to commence January 14, 1992.

Pursuant to Section 354 of the Practice Book notice is hereby given to all parties that the Clerk of the Court will tax costs in the above-captioned matter in accordance with the Bill of Costs attached hereto on January 10, 1992 at 10:00 a.m. You may be present at such taxation if you so desire. Counsel for the plaintiff will not be present at such taxation unless prior objection is made. THE PLAINTIFF

BY S/ _____
Donald D. Philips, Esq.
Green & Kleinman, P.C.
Its Attorney

CERTIFICATION

I hereby certify that a copy of the fore going was mailed this 7th day of January, 1992 postage prepaid, to:
Cynthia D'Avanzo
8401 Button Quail Drive
Englewood, FL 34224

S/ _____
Donald D. Philips, Esq.
Commissioner of the
Superior Court

APPENDIX B

D.N. CV 91 0119495 S — SUPERIOR COURT
CITICORP MORTGAGE, INC. — J.D. OF STAMFORD/ NORWALK AT STAMFORD

VS.

CYNTHIA F. D'AVANZO — JANUARY 14, 1992

MOTION TO REOPEN JUDGMENT AND RESET LAW DAYS

The plaintiff in the above-entitled matter respectfully requests that the Judgment of Strict Foreclosure be reopened and the law days be reset in support thereof represents as follows:

1. A judgment of strict foreclosure entered in this matter on December 9, 1991 and the Court set January 14, 1992 as the law day for the defendant, Cynthia F. D'Avanzo, owner of the equity of redemption.

2. The subject property located at 173 Lawn Avenue, Stamford, Connecticut has been substantially damaged by fire.

3. Citicorp Mortgage, Inc. is presently engaged in ongoing settlement negotiations with the insurance company and has not yet settled its claim with the insurance company.

4. Citicorp Mortgage, Inc. requests that the law day be extended for six (6) months.

PLAINTIFF
CITICORP MORTGAGE, INC.

BY: S/ _____
Deborah L. Dorio, Esq.
Green & Kleinman, P.C.

One Corporate Center
Hartford, CT 06103
Juris No.: 24553
Tel. No. 728-5321

ORDER

The foregoing Motion having been heard it is hereby ORDERED: GRANTED.

BY S/ _____
Clerk/Judge

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed this date to all parties of record as follows:

Cynthia D'Avanzo
8401 Button Quail Drive
Englewood, FL 34224

S/ _____
Deborah L. Dorio
Commissioner of the
Superior Court

APPENDIX C

NO.	:	SUPERIOR COURT
CYNTHIA D'AVANZO	:	J.D. OF STAMFORD
VS.	:	AT STAMFORD
CITICORP	:	MARCH 16, 1992

APPLICATION FOR A TEMPORARY INJUNCTION AND ORDER TO SHOW CAUSE

The plaintiff in the above-entitled action hereby makes application for a temporary injunction in accordance with her prayer for relief, and respectfully requests that an injunction be issued forthwith for the following reasons:

1. The defendant has unilaterally opened a judgment of foreclosure ex parte, without any notice or knowledge on the part of the plaintiff, all as set forth in the complaint attached hereto.

2. If the defendant is allowed to satisfy the plaintiff's debt by seeking and receiving insurance proceeds, there will be no redress for the loss of rights suffered by the plaintiff as a result of the **ex parte** and unilateral actions of the defendant taken without notice and an opportunity to be heard.

In the alternative, the plaintiff requests that the defendant be ordered to appear at an early date to show cause why the prayer for an injunction should not be granted.

THE PLAINTIFF

BY: S/ _____

Kevin A. Coles, Esq.
One Corporate Drive
Suite 612
Shelton, CT 06484
Juris #10051
(203)335-3131

NO.	:	SUPERIOR COURT
CYNTHIA D'AVANZO	:	J.D. OF STAMFORD
VS.	:	AT STAMFORD
CITICORP	:	MARCH 16, 1992

ORDER TO SHOW CAUSE

Whereas, the foregoing complaint with prayer for relief and a motion for temporary injunction, duly verified, has been presented to this court, or to me as a judge of the Superior Court, and

Whereas, upon application of the plaintiff, it appears that an order should be issued directing the defendant in this action to appear before the court, or the undersigned to show cause why a temporary injunction should not issue.

NOW, therefore, it is ordered that the defendant be summoned to appear before the Superior Court for the Judicial District of Stamford/Norwalk at Stamford at 123 Hoyt Street, Stamford, Connecticut 06905, on April 6, 1992, at 9:30 in the forenoon, then and there to show cause why a temporary and/or permanent injunction should not issue against it as prayed for in the foregoing complaint and application.

Dated at Stamford, Connecticut on the 20th day of March, 1992.

BY THE COURT
(Mottolese, J.)

S/ _____
Mary Pat Emmis, Asst. Clerk

NO.	:	SUPERIOR COURT
CYNTHIA D'AVANZO	:	J.D. OF STAMFORD
VS.	:	AT STAMFORD
CITICORP	:	MARCH 16, 1992

COMPLAINT

1. On December 14, 1988, the defendant loaned the plaintiff the sum of One Hundred Eleven Thousand Dollars ($111,000.00). In consideration thereof, the plaintiff granted a mortgage to secure that loan on real property located at 173 Lawn Avenue, Stamford, Connecticut.

2. On or about June 26, 1991, a fire occurred at the premises.

3. At that time, the premises was insured by the Liberty Mutual Insurance Company, and that policy was in full force and effect.

4. The plaintiff made a claim to the Liberty Mutual Insurance Company pursuant to her policy of insurance.

5. On or about August 16, 1991, the defendant instituted an action in this court to foreclose its mortgage on the subject premises; that action is entitled *Citicorp Mortgage Inc. v. Cynthia D'Avanzo* and bears docket #CV 91 0119495.

6. On December 9, 1991, at the defendant's request and after due notice to the plaintiff, the court entered a judgment of strict foreclosure against the plaintiff.

7. A law day of January 14, 1992 was ordered by the court.

8. Notice of this ruling was sent to the plaintiff by the defendant on January 7, 1992 in the form of a Notice of Judgment and Taxation of Costs dated January 4, 1992; a true copy of this Notice is attached hereto as Exhibit A.

9. The defendant had elected its remedy to enforce the plaintiff's obligations to it by foreclosing its mortgage.

10. On January 14, 1992, the defendant filed a Motion to Reopen The Judgment of Strict Foreclosure for the reason that "the property has been substantially damaged by fire", and "Citicorp Mortgage, Inc. is presently engaged in ongoing settlement negotiations with the insurance company and has not yet settled its claim with the insurance company", all as set forth in the defendant's motion, a copy of which is attached hereto as Exhibit B.

11. On January 14, 1992, the defendant appeared before the Superior Court, or a judge thereof and sought and obtained an order reopening the judgment of strict foreclosure.

12. The plaintiff did not receive any copy or notice of the motion, nor any notice that the defendant was proceeding with the motion at any time prior to the defendant's proceeding thereon.

13. A copy of the defendant's Motion to Reopen was sent to the plaintiff on January 14, 1992 by the defendant's attorney of record in the foreclosure litigation.

14. As a result of the defendant's unilateral actions taken ex parte, and without any notice to the plaintiff, the plaintiff was deprived of the right to rely upon the judgment of the Superior Court and of the effect of that judgment and the law days ordered.

15. Had the defendant not acted as it did, title to the premises would have become absolute in the defendant at 12:01 a.m. on January 15, 1992, and, by operation of law, the judgment could not have been opened, as provided in C.G.S. Section 49-15.

16. Further, the debt of the plaintiff to the defendant would have been extinguished and any further action on said debt would have been barred, as provided in C.G.S. Section 49-1, except for the right to seek a deficiency judgment as provided in C.G.S. Section 49-14.

17. Further, the plaintiff would have been relieved of the burdens of ownership of this property including, but not limited to, the obligations to maintain it and the expenses of taxes and insurance, if available.

18. As a further result of the defendant's actions, the plaintiff remains indebted to the defendant in excess of $122,000.00.

19. As a direct result of the defendant's actions, the plaintiff has been deprived of her constitutional rights of notice, of a hearing, of an opportunity to appear and be heard, and due process of law and equal protection of the laws as guaranteed to her under the Constitutions of The United States of American and the State of Connecticut.

20. The defendant has notified the plaintiff that it intends to proceed with a claim against The Liberty Mutual Insurance Company and seek satisfaction of the plaintiff's debt from that source, as set forth in Exhibits B and C attached hereto.

21. If the defendant is allowed to satisfy the plaintiff's debt through insurance proceeds, the plaintiff will be deprived of the benefits otherwise available to her under the policy of insurance.

22. The acts complained of have caused and will cause the plaintiff irreparable injury and a continuing denial of her constitutional rights, unless restrained.

23. The plaintiff has no adequate remedy at law.

WHEREFORE, THE PLAINTIFF CLAIMS;

1. A temporary and permanent injunction prohibiting and restraining the defendant from seeking satisfaction of its debt by any means including insurance proceeds.

2. An order declaring the order of the Superior Court in reopening the judgment on January 14, 1992 null and void.

3. Such other relief as the court deems equitable and just.

THE PLAINTIFF

BY: S/ _____
Kevin A. Coles, Esq.
One Corporate Drive
Suite 612
Shelton, CT 06484
Juris #10051
(203)335-3131

S/ _____
Cynthia D'Avanzo

State of Florida

ss:

County of Sarasota

Personally appeared Cynthia D'Avanzo and made oath to the truth of the matters contained in the foregoing complaint, before me

S/ _____
Notary Public

NO.	:	SUPERIOR COURT
CYNTHIA D'AVANZO	:	J.D. OF STAMFORD
VS.	:	AT STAMFORD
CITICORP	:	MARCH 16, 1992

STATEMENT OF AMOUNT IN DEMAND

The amount, legal interest or property in demand is more than $15,000.00, exclusive of interest and costs.

THE PLAINTIFF
BY: S/_____
Kevin A. Coles, Esq.
One Corporate Drive
Suite 612
Shelton, CT 06484
Juris #10051
(203)335-3131

APPENDIX D

D.N. CV 92 0123232S — SUPERIOR COURT

CYNTHIA D'AVANZO — J.D. OF STAMFORD

VS. — AT STAMFORD

CITICORP MORTGAGE, INC. — JUNE 3, 1992

MEMORANDUM OF DECISION

The plaintiff Cynthia D'Avanzo, instituted the present action seeking a temporary and permanent injunction prohibiting and restraining the defendant, Citicorp Mortgage, Inc. ("Citicorp") from seeking satisfaction for debt owed to the plaintiff as a result of a mortgage granted by the plaintiff to secure a loan on real property.

The present action arises out of an action previously brought by Citicorp against Cynthia D'Avanzo seeking a foreclosure of the mortgage (See, Civil Action 91-0119495). A default for failure to appear was entered against Cynthia D'Avanzo on October 17, 1991 and on December 9, 1991, a judgment of strict foreclosure was entered with law days commencing on January 14, 1992.

On January 14, 1992, the law day set for Cynthia D'Avanzo, Citicorp filed a Motion to Reopen the Judgment of Strict Foreclosure and to Reset the Law Days asserting that Citicorp was presently engaged in the ongoing settlement negotiations with an insurance company that the case had not yet been settled. At the time of the filing of the Motion to Reopen, Cynthia D'Avanzo had not filed an appearance either pro se or by counsel. Counsel for Citicorp advised the court that an attempt had been made to get in touch with the plaintiff, but she was not able to be reached. Counsel also advised the court that counsel did not imagine that Cynthia D'Avanzo would have any objection to the granting of the Motion to Reopen.

Thereafter, the court reopened the judgment, set a new law day for June 15, 1992 and directed that notice of the reopening of the judgment be forwarded to Cynthia D'Avanzo which was done. Thereafter, on March 2, 1992 counsel for Cynthia D'Avanzo filed an appearance in the mortgage foreclosure action and filed an objection to the Motion to Reopen the Judgment and a Motion to Reargue. Both motions asserted lack of notice or opportunity to be heard until after the Motion to Reopen the judgment was heard and granted. The motions filed in the mortgage foreclosure action on behalf of Cynthia D'Avanzo have not been pressed by counsel and no action has been taken with respect to those motions.

On March 20, 1992 Cynthia D'Avanzo instituted the present injunction action asserting that she was entitled to notice of the proceeding that took place on January 14; that she did not receive such notice. The plaintiff therefore, claims that the proceedings held on January 14, are void and the judgment of strict foreclosure is effective and results in Citicorp owning the property as of January 14, 1992. Plaintiff further claims that she has been deprived of her rights to rely upon the judgment entered on December 9 and has now been exposed to additional burdens of owning the property including the expenses of taxes and that she continues to be indebted to Citicorp.

Under Practice Book Section 354, where a party has failed to enter an appearance, or has been defaulted that party is entitled to notice of any judgment entered after default. Such notice was provided with respect to the December 9, 1991 judgment and with respect to the reopening which occurred on January 14, 1992. However, the defendant did not receive any prior notice of the filing of the Motion to Reopen the Judgment nor was the plaintiff provided an opportunity to be heard prior to action being

taken on that motion. Practice Book Section 121(c) provides:

> "Any pleading asserting new or additional claims for relief against parties who have not appeared or who have been defaulted shall be served on such parties."

The court finds that the Motion to Reopen the Judgment and to Reset Law Days constitutes a pleading asserting new or additional claims for relief within the meaning of Practice Book Section 121(c). The plaintiff was therefore, entitled to be "served" within the meaning of that section.

Under the equitable powers, the court deems it most appropriate to hear and determine the pending motions filed by Cynthia D'Avanzo in the mortgage foreclosure action and accordingly, those motions are set down for hearing on Wednesday, June 10, 1992 at 9:15 a.m. in Stamford.

Cynthia D'Avanzo also claims that Citicorp's Motion to Reopen was wrongfully filed and acted upon because Citicorp did not pay the $50 filing fee pursuant to General Statutes Section 52-259c. However, the file on the mortgage foreclosure action shows a $50 receipt for January 14, 1992.

Accordingly, the Motion for Temporary and Permanent Injunction is hereby denied.

S/ _____
RUSH, J.

APPENDIX E

D.N. CV 91 0119495S SUPERIOR COURT

CITICORP MORTGAGE, INC. J.D. OF STAMFORD/
NORWALK AT STAMFORD

VS.

CYNTHIA F. D'AVANZO JUNE 16, 1992

MOTION FOR DEFICIENCY JUDGMENT

The plaintiff in the above-captioned matter represents as follows:

1. A Judgment of Strict Foreclosure entered in this matter on December 9, 1991, and the Court set June 15, 1992 as the law day for the defendant, Cynthia F. D'Avanzo, owner of the equity of redemption;

2. At the time of the entry of said judgment, the subject property was appraised at a value of $100,000.00, and the plaintiff's debt was found to be $122,728.18, plus attorney's fees of $1,000.00, plus costs taxed at $968.28;

3. The said defendant owners failed to redeem on her law day, and all subsequent encumbrancers also failed to redeem;

4. Title to the subject premises vested in the plaintiff on June 16, 1992;

5. On the basis of the foregoing valuation and the amount of the plaintiff's debt, the plaintiff has reason to believe that a deficiency exists in connection therewith.

WHEREFORE, the plaintiff moves that an evidentiary hearing be assigned in this matter, in order that a valuation be established for the subject property and a deficiency judgment be entered in accordance with said valuation.

PLAINTIFF

BY S/ _____
Deborah L. Dorio
Green & Kleinman, P.C.
Its Attorneys

ORDER

The foregoing motion having been presented to the Court, and an evidentiary hearing having been conducted in pursuance thereof, the Court finds that the mortgaged property was not redeemed and that title to the said property vested in the plaintiff on June 16, 1992. The Court further finds that on said date the plaintiff's debt was $, that the subject property on said date had a value of $, and that therefore a deficiency judgment may enter for the plaintiff against the defendant, Cynthia F. D'Avanzo, in the amount of $31,681.72.

BY THE COURT

S/ _____
Lewis, J.
11/23/92
JUDGE/CLERK/ASSISTANT CLERK

APPENDIX F

CITICORP MORTGAGE, INC. V. CYNTHIA D'AVANZO

CYNTHIA D'AVANZO V. CITICORP MORTGAGE, INC.

(11960)

(11493)

DUPONT, C.J., LAVERY AND HEIMAN, Js.

The plaintiff in the first case, C Co., sought to foreclose a mortgage on certain of the defendant D's real property which had been substantially destroyed by fire. After the trial court rendered judgment of strict foreclosure and set the law day, C Co. moved to open the judgment to reset the law day. D filed an objection to the motion to open and a motion to argue asserting that she lacked notice of the motion to open. In the second case, D sought an order declaring the granting of the motion to open to be null and void and an injunction to prevent C Co. from seeking satisfaction of the debt from, inter alia, fire insurance proceeds. The trial court denied the defendant's request for injunctive relief but granted her motion to reargue. After a hearing, that court overruled the objection to the motion to open, and thereafter granted C Co.'s motion for a deficiency judgment. On D's appeals to this court, held:

1. D having failed to appeal from the overruling of her objection to C Co.'s motion to open, title to the property vested in C Co., and D could not raise the lack of notice issue in her challenge to the deficiency judgment.

2. The trial court did not abuse its discretion in denying injunctive relief; D failed to demonstrate that she would suffer irreparable harm and she had a full opportunity to

challenge the motion to open the judgment when the trial court conducted a hearing on her motion to reargue.

Argued April 30--decision released June 15, 1993

Action to foreclose a mortgage on certain real property, brought to the Superior Court in the judicial district of Stamford-Nowalk, where the court, Nigro, J., granted the plaintiff's motion for strict foreclosure and rendered judgment thereon; thereafter, the court Rush, J., granted the motion to open the judgment and set a new law day; subsequently, the court, Lewis, J., granted the plaintiff's motion for a deficiency judgment, and the defendant appealed to this court.
Affirmed.

Action to enjoin the defendant from proceeding to collect moneys owed by the plaintiff pursuant to a judgment of foreclosure, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the court, Rush, J., rendered judgment denying the injunction from which the plaintiff appealed to this court.
Affirmed.

Kevin A. Coles, for the appellant (defendant in the first case, plaintiff in the second case).

Deborah L. Dorio, with whom were Lloyd Cowinger and, on the brief, William F. Beckert, legal intern, for the appellee (plaintiff in the first case, defendant in the second case).

HEIMAN, J. Cynthia D'Avanzo appeals (11493) from the trial court's denial of her request for a temporary and permanent injunction. She also appeals (11960) from the deficiency judgment rendered against her by the trial court in a foreclosure action brought by Citicorp Mortgage, Inc. We affirm the judgments of the trial court.

The following facts are necessary for a resolution of these appeals. On December 14, 1988, Citicorp loaned D'Avanzo $111,000.00. In turn, she signed a note and executed a mortgage on real property located at 173 Lawn Avenue, Stamford, to secure the loan. The property was substantially damaged by fire on June 26, 1991. In August, 1991, Citicorp brought an action seeking foreclosure of the mortgage, possession of the property, money damages, reasonable attorney's fees, interest, costs, deficiency judgment, and such other and further relief that the court may deem just and equitable. In October, 1991, the court granted Citicorp's motion for default for failure of D'Avanzo to appear. In December, 1991, the court granted Citicorp's motion for strict foreclosure and set a law day of January 14, 1992. Citicorp mailed notice of judgment and taxation of costs to D'Avanzo.

On January 14, 1992, Citicorp filed a motion to open the judgment and rest the law day. Citicorp telephoned D'Avanzo in order to notify her of the hearing scheduled on the motion, but was unable to contact her. D'Avanzo thus had no notice of the motion or hearing prior to the proceedings.[1] On that date, the trial court granted Citicorp's motion and set a new law day of June 15, 1992.

On March 2, 1992, D'Avanzo filed an appearance in the mortgage foreclosure action and filed an objection to the motion to open the judgment and rest the law day and a motion to reargue. In both motions, she asserted that she lacked notice of the motion to open and an opportunity to be heard until after Citicorp's motion to open was already heard and granted.

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[1] Citicorp mailed a copy of the motion to D' Avanzo on January 14, 1992.

On March 20, 1992, D'Avanzo brought an action seeking temporarily and permanently to enjoin Citicorp from seeking satisfaction of its debt by any means, including resort to fire insurance proceeds, seeking an order declaring that the trial court's granting of the motion to open the judgment on January 14, 1992, to be null and void, and seeking such other relief as the court deemed equitable and just.

On June 4, 1992, the trial court issued a memorandum of decision. It found that Citicorp sent notice of the December 9, 1991 judgment of strict foreclosure and the January 14, 1992 judgment opening the strict foreclosure. The court found, however, that D'Avanzo was not provided with prior notice of the filing of the motion to open the judgment nor was she provided with an opportunity to be heard prior to action being taken on that motion. The court also found that the motion to open the judgment and to reset the law day constituted a pleading asserting new or additional claims for relief within the meaning of Practice Book Section 121(c).[2] The court denied D'Avanzo's motion for temporary and permanent injunction. On June 10, 1992, the trial court granted her motion to reargue the motion to open in the foreclosure action and then, after a hearing, overruled her objection to the motion to open. D'Avanzo did not, however, appeal from the overruling of the latter motion.

On June 24, 1992, Citicorp filed a motion for deficiency judgment. The court granted the motion on November 23, 1992, and found the deficiency to be $31,681.72.

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[2] Practice Book Section 121(c) provides: "Any pleading asserting new or additional claims for relief against parties who have not appeared or who have been defaulted shall be served on such parties."

On June 22, 1992, D'Avanzo filed her appeal in the first case from the denial of her motion for temporary and permanent injunction. On December 7,f 1992, she filed her appeal in the second case.[3]

I

(11960)

In her second appeal,[4] D'Avanzo asserts that (1) she was entitled to rely on the judgment of strict foreclosure that was granted on December 9, 1991, (2) the trial court improperly issued a deficiency judgment in favor of Citicorp because, as a matter of law and equity, Citicorp was not entitled to a deficiency judgment, (3) the deficiency judgment rendered by the court violates her due process rights under the fourteenth amendment to the constitution of the United States, and (4) the trial court, by granting Citicorp's motion for deficiency judgment, has endorsed and approved a violation of her constitutional rights and rights secured under Practice Book Section 354.

According to D'Avanzo, she does not seek on this appeal to set aside the vesting of title to the premises in Citicorp, but rather she is attempting to prevent Citicorp from taking

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[3] Although the filing of the appeal from the judgment denying D'Avanzo's request for a temporary and permanent injunction preceded her filing of her appeal from the deficiency judgment, for purposes of clarity, the latter appeal will be analyzed first.

[4] Practice Book Section 354 provides: "A notice of every nonsuit for failure to enter an appearance or judgment after default for failure to enter an appearance, which notice includes the terms of the judgment, shall be mailed forthwith by counsel of the prevailing party to the party against whom it is directed and a copy of such notice shall be sent to the clerk's office. Proof of service shall be in accordance with Sec. 123."

any further collection action on the note by way of a deficiency judgment.[5]

Once title has passed in a strict foreclosure, a final judgment has occurred that cannot be opened. General Statutes Section 49-15; *Bank of Stamford v. Alaimo*, 31 Conn. App. 1, 8, 622 A.2d 1057 (1993). Pursuant to General Statutes Section 49-14, within thirty days after the time for redemption has expired, the mortgagee may file a motion seeking deficiency judgment, as Citicorp did in this case. "Any claims by the defendant that were made or could have been made in the foreclosure proceeding cannot be relitigated in the deficiency hearing. . . . Some defenses may be raised to a motion for deficiency judgment, but not those that were or could have been made in the foreclosure hearing. *Maresca v. DeMatteo*, 6 Conn. App. 691, 506 A.2d 1096 (1986)(defense of usury)(timeless of the filing of a motion for deficiency judgment in a strict foreclosure); see also *Baybank Connecticut, N.A., v. Thumlert*, 222 Conn. 784, 610 A.2d 658 (1992) (the defense of laches as to the issue of timeliness in filing the motion for deficiency in a foreclosure by sale proceeding under General Statutes Section 49-28); *Society for Savings v. Chestnut Estates, Inc.*, 176 Conn. 563, 409 A.2d 1020 (1979) (the constitutionality of Section 49-14)." *Bank of Stamford v. Alaimo*, supra, 9-10. The purpose of these deficiency proceedings is to determine through a hearing the value of the property that has been foreclosed as of the date title vests in the mortgagee and to award the difference between that value and the amount of the debt as established by the foreclosure judgment. Id., 7; *DiDiego v. Zarro*, 19 Conn. App. 291, 294, 562 A.2d 555 (1989).

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[5] She asserts in her brief that "[h]ad the judgment not been reopened, Citicorp would have taken absolute title to the property on January 15, 1992, and its right to seek a deficiency judgment would have expired through a lapse of time."

Here, D'Avanzo failed to appeal from the overruling of her objection to the motion to open. This overruling occurred prior to the date on which title vested in the bank. Had she appealed from the disposition of that motion, she would have been permitted to raise her claims of lack of notice and the deprivation of her due process rights that may have arisen out of Citicorp's failure to notify motion to open and the subsequent hearing on that motion. Once title vested in Citicorp, however, she was precluded from raising these issues because a final judgment had entered that could not be opened. See General Statutes Section 49-15. Her attempt to make these challenges at the deficiency hearing and on appeal can be to no avail since these claims are not proper defenses to a motion for deficiency judgment, but rather might be defenses to the foreclosure action.[6]

II

(11493)

In her first appeal, D'Avanzo asserts that the trial court improperly (1) denied her motion for temporary and permanent injunction, (2) failed to prohibit Citicorp from seeking satisfaction of its debt by any means, including insurance proceeds, and (3) failed to determine that the trial court's order opening the judgment in the foreclosure action was null and void.[7]

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[6] Moreover, any alleged constitutional defect concerning lack of notice and due process violations was cured by the trial court's granting of her motion to reargue and hearing her objection to the motion to open the judgment and to reset the law day.

[7] Our resolution of D'Avanzo's second and third claims in appeal (11493) is controlled by our holding in her appeal from the deficiency judgment. See part I, supra.

The granting or denial of injunctive relief rests within the discretion of the trial court. *Walton v. New Hartford*, 223 Conn. 155, 165, 612 A.2d 1153 (1991); *Dukes v. Durante*, 192 Conn. 207, 225, 471 A.2d 1368 (1984); *Harvey v. Daddona*, 29 Conn. App. 369, 377, 615 A.2d 177 (1992). To obtain such relief, the applicants must demonstrate that they would suffer irreparable harm and that they lack an adequate remedy at law. *Walton v. New Hartford*, supra; *Stocker v. Waterbury*, 154 Conn. 446, 449, 226 A.2d 514 (1967); *Harvey v. Daddona*, supra. Our review of the trial court's denial of injunctive relief is limited to determining whether the decision was based on erroneous statements of law or on an abuse of discretion. See *Walton v. New Hartford*, supra; *Harvey v. Daddona*, supra. Demonstrating that the trial court has abused its discretion is a difficult task. "Our appellate decisions emphasize that an abuse of discretion leading to a reversal is rare." *Madigan v. Madigan*, 224 Conn. 749, 758, 621 A.2d 258 (1993).

Our review of the entire record reveals that the trial court did not abuse its discretion in denying D'Avanzo's application for a temporary or permanent injunction. In her application for injunctive relief, the plaintiff asserted that "if [Citicorp] taken without notice and an opportunity to be heard." In her complaint praying for injunctive relief, D'Avanzo asserted that "[a]s a result of [Citicorp's] unilateral actions taken ex parte and without any notice to the plaintiff, [she] was deprived of the right to rely upon the judgment of the Superior Court and of the effect of that judgment and the law days ordered." She further asserted that "[a]s a direct result of [Citicorp's] actions, [she] has been deprived of her constitutional rights of notice, of a hearing, of an opportunity to appear and be heard, and due process of law and equal protection of the laws as guaranteed

to her under the Constitutions of The United States of America and the State of Connecticut."

D'Avanzo has failed to demonstrate that she would suffer irreparable harm if the injunctive relief was denied. She had a full opportunity to challenge the opening of the judgment and resetting of the law day when the court granted her motion to reargue and conducted a hearing on her objection to Citicorp's motion to open. The court found that it would be more appropriate for D'Avanzo to raise her claims during the hearing on the motion to reargue and on the objection to the motion to open. Any alleged constitutional defect was cured by the hearing on the objection to Citicorp's motion to open. The trial court did not abuse its discretion in denying the motion for injunctive relief.

The judgments are affirmed.

In this opinion the other judges concurred.

APPENDIX G

227 Conn. 909

CYNTHIA D'AVANZO V. CITICORP MORTGAGE, INC.

The plaintiff's petition for certification for appeal from the Appellate Court, 31 Conn. App. 621 (AC 11493), is denied.

Kevin A. Coles, in support of the petition.

Decided September 15, 1993

CITICORP MORTGAGE, INC. V. CYNTHIA D'AVANZO

The defendant's petition for certification for appeal from the Appellate Court, 31 Conn. App. 621 (AC 11960), is denied.

Kevin A. Coles, in support of petition.

Deborah L. Dorio, in opposition.

Decided September 15, 1993

APPENDIX H

FOURTEENTH AMENDMENT,
CONSTITUTION OF THE UNITED STATES.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

C.G.S. Section 49-1 states:

The foreclosure of a mortgage is a bar to any further action upon the mortgage debt, note or obligation against the person or persons who are liable for the payment thereof who are made parties to the foreclosure and also against any person or persons upon whom service of process to constitute an action in personam could have been made within this State at the commencement of the foreclosure; but the foreclosure is not a bar to any further action upon the mortgage debt, note or obligation as to any person liable for the payment thereof upon whom service of process to constitute an action in personam could not have been made within this State at the commencement of the foreclosure. The judgment in each such case shall state the names of all persons upon whom services of process has been made as herein provided.

Section 49-14(a) states:

At any time within 30 days after the time limited for redemption has expired, any party to a mortgage foreclosure may file a motion seeking a deficiency judgment. Such motion shall be placed on the short calendar for an evidentiary hearing. Such hearing shall be held not less

than 15 days following the filing of the motion, except as the court may otherwise order. At such hearing the court shall hear the evidence, establish a valuation for the mortgaged property and shall render judgment for the plaintiff for the difference, if any, between such valuation on the plaintiff's claim. The plaintiff in any further actionupon the debt, note or obligation, shall recover only the amount of such judgment.

C.G.S. Section 49-15 states:

Any judgment foreclosing the title to real estate by strict foreclosure may, at the direction of the Court rendering the same, upon the written motion of any person having an interest therein, and for cause shown, be opened and modified, notwithstanding the limitation imposed by Section 52-212a, upon such terms as to costs as the Court deems reasonable; but no such judgment shall be opened after the title has become absolute in any encumbrancer.

CONNECTICUT PRACTICE BOOK SECTIONS

Section 121(c) of the Practice Act states:

Any pleading asserting new or additional claims for relief against parties who have not appeared or who have been defaulted shall be served on such parties.

Section 354 of the Practice Act states:

A notice of every nonsuit for failure to enter an appearance or judgment after default for failure to enter an appearance, which notice includes the terms of the judgment, shall be mailed forthwith by counsel of the prevailing party to the party against whom it is directed and a copy of such notice shall be sent to the clerk's office. Proof of service shall be in accordance with Sec. 123.